IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

WP(C).No. 21846 of 2007(A)

(AGAINST THE JUDGMENT/ORER DATED 16/06/2007 OF THE FIRST ADDITIONAL MUNSIFF AT ERNAKULAM)

PETITIONER: PLAINTIFF:

SRI.M.P. ABRAHAM, AGED 72 YEARS,
S/O. LATE M.L.PHILIP,RESIDING AT ASHISHA MANGALATH
SATELITE TOWNSHIP, KAKKANAD WEST P.O.,KOCHI-682036.

BY ADV. SRI.P.P.JOYI

RESPONDENTS:DEFENDANTS:

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1. **THE KERALA STATE HOUSING BOARD,**
   REP. BY ITS SECRETARY, K.S.H.B. SANTHI NAGAR,
   THIRUVANANTHAPURAM.

2. **THE ADMINISTRATIVE OFFICER,**
   KERALA STATE HOUSING BOARD, COCHIN HOUSING UNIT,
   PANAMPILLY NAGAR, KOCHI-16.

BY ADV. SRI.A.JAYASANKAR, SC KSHB, TVM for R1 & R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.21846/2007 A

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **LEAVE TO SUE DATED 9/10/06 GRANTED BY PRI MUNSIFF, ERNAKULAM U/S 80 (2) OF THE C.P.C. IN I.A.NO.9253/06.**

EXT.P2: **IMPUGNED JUDGMENT ORDER DTD. 16/06/07.**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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W.P.(C) No.21846 OF 2007

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Dated this the 10th day of September 2007

JUDGMENT

This writ petition is preferred challenging the judgment of the I Addl.Munsiff's Court, Ernakulam in O.S.No.1143 of 2006. The court below found that the suit is not maintainable and answered it as a preliminary issue which was found against the plaintiff and therefore dismissed the suit. It is against the dismissal of the suit, this writ petition is preferred. Under the Code of Civil Procedure, there is a provision enabling the parties to have their grievance redressed by resorting to Order 41 of the C.P.C. Or, in other words, the Civil Procedure Code statutorily prescribes the forum where a judgment passed by a trial court has to be appealed against. Now the learned counsel for the writ petitioner submits before me that in view of the decision of the Apex Court in ***Surya Dev Rai V.Ram Chander Rai(2003(3) KLT 490***) this court has got ample powers under Articles 226 and 227 of the Constitution of India to interfere with the decision of the court under the original power and the supervisory jurisdiction conferred on this court by these two articles. The Apex Court was considering the question of

maintainability of writ petitions in view of the amendment to Section 115 of the C.P.C. whereby the right to file civil revision petitions were taken away by the Parliament by amendment to the C.P.C. When such was the situation the Apex Court, after elaborately considering the entire case law laid down the principles under which the jurisdiction under Article 226 or Article 227 can be exercised by the High Courts. It is contended by the learned counsel for the writ petitioner that there are decisions which would show that the finding arrived at by the learned Munsiff is against the provisions of law and therefore it has resulted in miscarriage of justice and this is a fit case where jurisdiction has to be invoked under Article 226 or 227 of the Constitution of India. There is no quarrel that the plaintiff has approached a civil court for redressal of his grievance. He had approached the court fully knowing the implications of the civil law. The Code of Civil Procedure specifically mandates the method and forums for initiation and disposal of cases. Further what is contemplated by the C.P.C. is a thread bare enquiry into the dispute between the parties after full fledged trial. That is why the C.P.C. also provides an appeal when a person is aggrieved by the judgment/order/decree of a court. On the other hand, the remedy for the party is to prefer a civil appeal and this court cannot exercise its jurisdiction under Article 226 or 227 of the Constitution of India to set aside a judgment

passed by a competent civil court. Further there is no manifest error of law to interfere under Article 227.Since I am not entertaining this writ petition, it is dismissed. So far as this court is concerned it is only now vested with the power of looking into the irregularity or illegality committed by the civil courts and if the party wants to challenge the validity of any rule or any section, it is left to him to do so in appropriate proceedings.

M.N.KRISHNAN, JUDGE

Cdp/-